

House Conferees: Restrictions on Their Authority

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To resolve differences between House and Senate versions of a measure, Congress may establish a conference committee, composed of a House and a Senate delegation. Its task is to propose a final version of the measure, referred to as a conference report, for the approval of both houses. This report discusses rules that restrict the substance of what House conferees may agree to include in a conference report. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

“Scope” Requirement

A conference has before it both a House and a Senate version of the same measure. In recent practice, these most often take the form of a House measure as passed by the House and a substitute for the entire text agreed to by the Senate, or *vice versa*. Often, the substitute from the second chamber (formally, an amendment in the nature of a substitute) reflects the text of a companion measure agreed to by that chamber. (Other possibilities exist, but all involve an amendment or amendments by one house to a measure agreed to by the other.)

House Rule XXII, clause 9, authorizes House conferees to negotiate only on matters in disagreement between the houses; that is, points on which the House and Senate versions of the measure differ. This rule permits conferees to reach an agreement that constitutes a “germane modification of the matter in disagreement.” Conferees may, for example, propose a “conference substitute,” a new amendment in the nature of a substitute as an alternative to both versions committed to conference. The conference proposal on each matter in disagreement must fall within the “scope of the differences” between the House and Senate versions. In general, this requirement means that conferees may not change or eliminate text agreed to by both houses, nor may they introduce any “specific additional matter” not included in either version. Also, they may not delete matter in such a way as to broaden the scope of the measure beyond both proposals.

If the two versions contain different provisions on the same subject, conferees must in general retain a provision on that subject. They may accept either the House or Senate version, or may propose a version intermediate between the two. The conference proposal may not be stronger than the stronger version or weaker than the weaker version. If only one house has a provision on a subject, then the position of the other house is implicitly that current law on the point should be maintained. The conferees may include the provision, omit it, or propose a version intermediate between it and current law.

Violations of Authority

In recent practice, conferees often include in their report provisions that either are entirely new or otherwise violate the scope requirement. A conference report containing provisions “outside the scope” is subject to a point of order in the House. If the Speaker sustains the point of order, the entire conference report is out of order and cannot be considered, because a conference report is a package agreement. It must be considered and disposed of as a unit; it may not be amended or broken up.

In this situation, conferees often ask the Committee on Rules to report a special rule for considering the conference report that waives the “scope” point of order. Alternatively, if little opposition is expected, the conference report may be called up on a motion to suspend the rules, which has the effect of waiving any points of order. The House may also waive points of order against a conference report by unanimous consent. All these procedures are also available to remedy other violations of conferees’ authority.

Appropriation Bills and “Technical Disagreement”

For “money bills,” conferees’ authority is subject to important additional restrictions. Rule XXII, clause 5, restricts the authority of House conferees to accept Senate amendments to appropriation bills that change existing permanent law (called “legislative amendments”) or make unauthorized appropriations, or Senate appropriations amendments to bills that are not appropriation bills. Rule XXII, clause 6, forbids House conferees from accepting a Senate revenue amendment to a House non-revenue bill.

In the past, if conferees reached agreements that violated these restrictions, they often reported their proposals as “amendments in technical disagreement.” They would formally report that they could not reach agreement (a “conference report in disagreement”). They would then propose that the House resolve the disagreement by agreeing to the Senate version as amended by a new House amendment. Because these motions to “recede and concur with an amendment” are not subject to the restrictions applicable to conference reports, the text of the new amendment could embody the agreement that conferees had actually reached. This approach becomes inconvenient, however, when the position of one house is embodied in a single second-chamber substitute for the entire text, which has become routine even on appropriations bills.

Nongermane Senate Provisions

Finally, House Rule XXII, clause 10, restricts the ability of House conferees to agree to include in a conference report provisions that originate in Senate language and are not germane to the measure as passed by the House. The rule subjects each provision of this kind to a separate point of order in the House. If the Speaker sustains the point of order, however, the conference report does not automatically become ineligible for consideration. Instead, a motion is in order to strike the nongermane matter from the conference report. If one or more motions to strike are agreed to, the conference report is considered as rejected. The rule then, however, permits the House automatically to consider a motion to recede and concur with an amendment consisting of the unrejected portion of the conference report.

For each nongermane Senate provision in a conference report, this mechanism permits the House to choose either to accept or reject it without killing the legislation as a whole. Similar procedures apply when Senate nongermane matter appears in an amendment reported from conference in (real or technical) disagreement.

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